

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 16, 2006

Division: Public Works

Bulk Item: Yes X No

Department: Facilities Maintenance

Staff Contact Person: John W. King

AGENDA ITEM WORDING: Approval of a Lease Amendment with Francis J. Gonzon, Owner, Salute Restaurant, to waive rent for 54 days during the months of July, August, September, October and November, 2005, when Atlantic Boulevard was closed due to Hurricane activity and the restaurant was not able to be open.

ITEM BACKGROUND: Mr. Gonzon pays Monroe County monthly rent in the amount of \$6,913.92 for Salute located on Atlantic Boulevard at Higgs Beach. He is requesting help from the County by waiving the rent for 54 days during the months that his restaurant was not able to operate due the hurricane activity in 2005.

PREVIOUS RELEVANT BOCC ACTION: N/A

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval to waive rents as stated above.

TOTAL COST: N/A

BUDGETED: Yes N/A No

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL: Dent Pierce

DOCUMENTATION: Included x Not Required

DISPOSITION: **AGENDA ITEM #**

MEMORANDUM

DATE: July 26, 2006

TO: Dent Pierce, Division Director
Public Works

FROM: John W. King, Sr. Director
Lower Keys Operations

RE: Agenda Item – August 16, 2006 BOCC Meeting
Key Largo – Gonzon/Salute Restaurant

Mr. Gonzon pays Monroe County monthly rent in the amount of \$6,913.92 for Salute located on Atlantic Boulevard at Higgs Beach. He has requested help from the County by waiving the rent for 54 days during the months that his restaurant was not able to operate due the hurricane activity in 2005.

I hereby request approval of a Lease Amendment with Francis J. Gonzon, Owner, Salute Restaurant, to waive rent in the amount of \$227.31 per day for a total of \$12,274.74 for 54 days during the months of July, August, September, October and November, 2005, when Atlantic Boulevard was closed due to Hurricane activity and the restaurant was not able to be open.

JWK/jbw

Enclosures

Dec. 8, 2005

John King
Public Utility Supervisor
Monroe County

Dear John,

This letter is regarding the recent impact that the hurricanes have had on my business. I am requesting possible rent relief and possible compensation for the building repairs due to the hurricanes and the road being closed. Our records show we were closed for 54 days. If you could offer any relief, it would greatly be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fran', with a large, stylized initial 'F'.

Fran Gonzon
President/CEO
Key West Hospitality LLC



1000 Atlantic Blvd., Key West, FL 33040
305.292.1117

To: Monroe County Commissioners

From: Salute' Restaurant; Fran Gonzon

RE: Closure Dates

Salute' Restaurant was closed due to the 4 hurricanes and the road closure of Atlantic Boulevard on the following dates.

- "Dennis" July 8-14th
- "Katrina" August 25-28th
- "Rita" September 17-29th
- "Wilma" October 20th - November 18th

If there are any questions, please feel free to give me a call. Thank you.

Sincerely,

Francis J. Gonzon
Owner; Salute Restaurant
305.292.1117
302.542.7885 cell

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Francis J. Gonzon, Owner Contract _____
Salute Restaurant Effective Date: _____
 Expiration _____
 Date: _____

Contract Purpose/Description:

The purpose of the agenda item is to abate rent for 54 days during the months of July, August, September, October and November, 2005 due to closure of Atlantic Boulevard caused by hurricanes and the inability to operate

Contract Manager: Jo B. Walters 4549 Facilities Maint/Stop #4
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 08/16/06 Agenda Deadline: 08/01/06

CONTRACT COSTS/REVENUE

Total Dollar Value of Contract: \$ Revenue Current Year Portion: \$ N/A
 Budgeted? Yes ☐ No ☐ Account Codes: _____
 Grant: \$ N/A _____
 County Match: \$ N/A _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____/yr For: _____
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed Yes <input type="checkbox"/> No <input type="checkbox"/>	Reviewer	Date Out
Division Director	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>Ch. P...</u>	<u>8/1/06</u>
Risk Management	<u>7-26-06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Sl...</u>	<u>7-26-06</u>
O.M.B./Purchasing	<u>7/27/06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Qu...</u>	<u>7/27/06</u>
County Attorney	<u>7/24/06</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>...</u>	<u>7/25/06</u>

Comments: This type of abatement has been provided for other tenants in the past when road closures stopped all business flow

LEASE AMENDMENT

This Lease Amendment is made and entered into this _____ day of _____, 2006, between the COUNTY OF MONROE, and FRANCIS J. GONZON in order to amend the Negotiated Lease Agreement, hereinafter referred to as "Lease" between the COUNTY COMMISSIONERS OF MONROE COUNTY and CONCH CRUISERS, INC., SAL PARRINELLO, dated August 12, 1998; as amended February 10, 1999; as amended July 21, 1999; as amended September 20, 2000; as amended May 16, 2001; as amended October 17, 2001; as amended July 17, 2002; as renewed July 15, 2003; as amended May 19, 2004; as amended July 14, 2004; and as assigned on April 20, 2005, as follows:

1. Rental payments in the amount of \$6,913.92 (Six Thousand Nine Hundred Thirteen and 92/100 Dollars) monthly or \$227.31 (Two Hundred Twenty-Seven and 31/100 Dollars) per day shall be abated for 54 days equaling a total amount of \$12,274.74 (Twelve Thousand Two Hundred Seventy-Four and 74/100 Dollars) due to the closure of Atlantic Boulevard because of hurricane damage as follows:
 - a. Hurricane Dennis: July 8 through 14, 2005;
 - b. Hurricane Katrina: August 25 through 28, 2005;
 - c. Hurricane Rita: September 17 through 29, 2005; and
 - d. Hurricane Wilma: October 20 through November 18, 2005
2. In all other respects, the original agreement between the parties dated August 12, 1998; as amended February 10, 1999; as amended July 21, 1999; as amended September 20, 2000; as amended May 16, 2001; as amended October 17, 2001; as amended July 17, 2002; as renewed July 15, 2003; as amended May 19, 2004; as amended July 14, 2004; and as assigned on April 20, 2005 remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____

Witness

FRANCIS J. GONZON, Owner
SALUTE RESTAURANT

Witness

By: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
[Signature]
NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date *5/2/06*

CONSENT TO ASSIGNMENT OF LEASE

This Consent to Assignment is entered into this 20th day of April, 2005, by and between Monroe County, a political subdivision of the State of Florida, hereafter County, Conch Cruisers, Inc., hereafter Assignor, and Francis J. Gonzon, hereafter Assignee, the parties agreeing as follows:

1. The County leases approximately 3,928 s.f. of restaurant space at Higgs Beach, Key West, Florida, through an Agreement dated August 12, 1998, hereafter the original agreement, and renewed on July 17, 2002 for one five-year term commencing August 12, 2003, with an additional five-year extension commencing August 12, 2008, at the Lessee's option. The original agreement has been modified to reflect changes in rent obligations on July 15, 2003, May 19, 2004, and July 14, 2004. The original agreement, modifications and renewal agreements are attached and incorporated into this Consent to Assignment.
2. Paragraph 7 of the lease provides that the Lessee may elect to sub-lease or assign the lease agreement only upon the previous written consent of the Board of County Commissioners for Monroe County.
3. The Assignor and Assignee have entered into a contract for sale/purchase of the restaurant business which contract includes an assignment to Assignee of all the Assignor's rights, title and interest in the lease.
4. In consideration for such consent, the Assignee agrees to be bound by all the terms and conditions of the original agreement, as previously amended.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above.

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

BY: Isabel C. DeSantis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY: Dixie M. Spehar
Mayor Dixie M. Spehar

LESSEE CONCH CRUISERS, INC.

BY: Dawn Vincent
Dawn Parinello
FKA
Dawn Parinello

LESSEE FRANCIS J. GONZON

BY: Francis J. Gonzon

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 4/5/04

CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this July 14, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, copies incorporated hereto for reference, as follows:

1. To correct action of May 19, 2004, to include 1.9% CPI rent increase to the monthly sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms at Higgs Beach.
2. Monthly rent, therefore, shall be payable to Monroe County in the amount of \$6,514.17, which shall include both the \$5,330.09 rental fee and the \$1,184.08 maintenance fee.

In all other respects, the original agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Garnett Hancock*

Deputy Clerk

By: *Murray & Nelson*

[Signature]

Witness

CONCH CRUISERS, INC.

Ronald R. Lee

Witness

By: *Dawn M. Vincent*

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

[Signature]
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 6/25/04

FILED FOR RECORD
2004 JUL 28 PM 12:56
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this May 19, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, copies incorporated hereto for reference, as follows:

1. In accordance with Article 2. of the July 15, 2003 Renewal Agreement: "The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
2. Rent, therefore, payable to Monroe County, shall increase by 1.9% from \$5230. 71 per month to \$5330.09 per month (\$99.38 per month additional).

In all other respects, the original agreement between the parties dated August 12, 1998, as amended on July 17, 2002 and Renewal Agreement dated July 15, 2003, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.



Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Gamela Hancock
Deputy Clerk

By: Murray E. Nelson

Ronald R. Cee
Witness

Hall
Witness

By: Dawn M. Vincent

FILED FOR RECORD
2004 JUL 16 PM 12:27
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
4/20/04

RENEWAL AGREEMENT
(Salute' Restaurant at Higgs Beach)

This Renewal Agreement is made and entered into this July 15, 2003, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to renew the Lease Agreement between the parties dated August 12, 1998, as amended on July 17, 2002, copies incorporated hereto for reference, as follows:

1. In accordance with Article 1. of the July 17, 2002 Lease Amendment, the Lessee exercises the option to renew the lease for the first of two (2) five-year terms; the first to commence on August 12, 2003, and terminate on August 11, 2008.
2. The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
3. Rent, therefore, payable to Monroe County shall increase by 2.4% from \$5108.12 per month to \$5230.71 per month.

In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Daniel C. DeFantis
Deputy Clerk

By: Heidi M. Spiker

Mark K. Anderson
Witness

Conch Cruisers, Inc.

Shannon P. Lyness
Witness

By: Dawn Parrinello, President
Dawn Parrinello, President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: Suzanne A. Hutton
SUZANNE A. HUTTON
6/26/03

FILED FOR RECORD
03 AUG - 5 PM 12:41
DANNY L. KOLHAGE
CLERK
COUNTY OF MONROE, FLORIDA

LEASE AMENDMENT
(Salute' Restaurant at Higgs Beach.)

THIS Amendment is made and entered into this 17th day of July 2002, between the COUNTY OF MONROE and CONCH CRUISER'S INC. in order to amend the Agreement dated August 12, 1998, (a copy of which is incorporated hereto by reference) as follows:

1. Revise paragraph 3 of the Lease to provide Lessee the option to renew the lease for two additional five (5) year terms; the first to commence, at Lessee's option, on August 12, 2003 (as presently provided in the lease); and the second term to commence, at Lessee's option, on August 12, 2008.
2. Revise paragraph 6(A) of the lease to provide: (1) Lessee shall be entitled to close the restaurant for three (3) weeks, between the dates September 16 and October 15 of each year; and (II) Public restrooms shall be opened at 7:00 a.m. and close at 11:00 p.m., Monday - Sunday, including holidays, pending change in County Ordinance #13.5-3(2)(C).
3. In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal, the day and year first written above.



Attest: DANNY L. KOLHAGE, CLERK

By: *Danny L. Kolhage*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____

CONCH CRUISERS, INC.

Andy Sawyer
Witness to Conch Cruisers, Inc.

By: *Dawn M. Parrinello*
Dawn Parrinello, President

Shannon Lynne
Witness to Conch Cruisers, Inc.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: *Suzanne A. Hutton*
SUZANNE A. HUTTON

DATE 7/16/02

FILED FOR RECORD
2002 JUL 30 PM 3:10
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

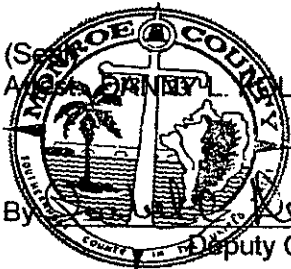
DM

CONTRACT AMENDMENT
(Salute' Restaurant at Higgs Beach)

This Contract Amendment is made and entered into this 17th Day of October, 2001, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, copies incorporated hereto for reference, as follows:

1. Revise payment schedule for September through December 2001, from being payable on the first day of the month, in advance, to submitting September's payment by October 15th, 1/3 of October's payment by October 31st, 2/3 of October's payment and 1/3 of November's payment by November 15th, 1/3 of November's payment by November 30th, and the balance of November and all of December's payment by December 15th, 2001.
2. In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.



(Seal of Monroe County, Florida)
By: [Signature] CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: [Signature: George R. Neugart]

[Signature: Cindy Sander]
Witness

CONCH CRUISERS, INC.

[Signature: Shannon S. Lopez]
Witness

By: [Signature: Dwight M. Fawcett]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY [Signature]
JUANNE A. HUTTON

11/01/01

FILED FOR RECORD
2001 DEC 13 PM 1:50
DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

THIRD AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession/Restaurant)

THIS LEASE AMENDMENT entered into the 16th day of May, 2001, by and between the Board of County Commissioners, Monroe County, Florida (Lessor) and Conch Cruisers, Inc., (Lessee).

WHEREAS, the parties did enter into a lease on August 12, 1998; and

WHEREAS, said Lease has been amended twice; and

WHEREAS, said Lease provides in Paragraph 6(a) to open public restrooms from 7 AM to sunset seven days a week year round, including holidays; and

WHEREAS, paragraph 6(c) of the Lease provides for Lessee to provide full janitorial services for the public restrooms including providing all janitorial supplies and paper products; and

WHEREAS, said janitorial services are to be provided on a daily basis to ensure restrooms are clean and sanitary; and

WHEREAS, said Lease makes no separate provision for adjustments or action other than termination of the Lease for breach of covenants under Paragraph 5, which conditions Lessee's possession upon performance and observance of Lessee's covenants; and

WHEREAS, said Paragraph allows the County to maintain the property but does not provide any penalty for Lessee's failure to do so; and

WHEREAS, numerous complaints and bad inspection reports have been generated as a result of Lessee's failure to keep the restrooms open the requisite number of hours and failure to keep the public restroom clean and sanitary; and

WHEREAS, the County deems it necessary to the sanitation of the public restrooms, thereby affecting public health and safety, to clean the restrooms; and

WHEREAS, Lessee is willing to relinquish responsibility for the public restrooms and increase the monthly rental fee to cover the County's cost of assuming such responsibility; now, therefore

IN CONSIDERATION of the promises contained herein, the lease dated August 12, 1998, as previously amended, is hereby amended as follows:

1. Paragraph 1 is amended to read:

This Lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit A.

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of restaurant facilities and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant such as furnishing food and beach concession at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. Paragraph 4 shall be amended to provide, as of the date of this Agreement, that monthly rent shall be increased by the sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms.

3. Paragraph 6(a) shall be amended to delete the second sentence, such that the subparagraph provides only:

To keep open such concession/restaurant Monday through Sunday, including holidays, from 7 AM to 10 PM, and shall not exceed the established beach hours specified in Monroe County Code, Sec. 13.5-3(2)(e).

4. Paragraph 6(c) shall be deleted.

5. The remaining provisions of the original lease agreement between the parties dated August 12, 1998, as previously amended, not inconsistent herewith, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presence to be executed as of the day and year first above written.



L. KOLHAGE, Clerk

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By George R. Neugebaur
Mayor/Chairman

CONCH CRUISERS, INC.

By Dawn M. Parrinello
Dawn M. Parrinello

Suzanne A. Hutton
Witnesses

Jdleaseconch3

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY Suzanne A. Hutton
SUZANNE A. HUTTON
DATE 4/11/01

FILED FOR RECORD
01 JUN -7 PM 12:20
DANNY L. KOLHAGE
CLK. CIR. C.
MONROE COUNTY, FLA.

SECOND AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession/Restaurant)

THIS LEASE AMENDMENT entered into the 20th day of September, 2000 by and between the Board of County Commissioners, Monroe County, Florida (Lessor) and Conch Cruisers, Inc., Sal Parrinello (Lessee) in order to amend that certain Lease Agreement entered into between the parties dated August 12, 1998.

WHEREAS, the Lessee leases the Higgs Beach Restaurant and Concession from Lessor; and

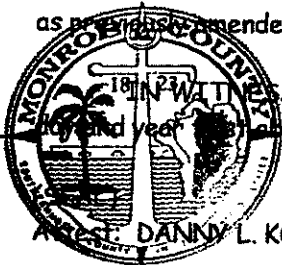
WHEREAS, Lessor previously abated rent for loss to business resulting from Hurricane Georges damage and prior beach closing; and

WHEREAS, Lessee has requested an abatement of rent for the period from June 1, 2000 through August 17, 2000, due to poor business while Higgs Beach was closed; now therefore

IN CONSIDERATION of the promises contained herein, the lease dated August 12, 1998, as previously amended, is hereby amended as follows:

1. The Lessor hereby grants an abatement of rent.
2. One half of the rent paid by Lessee for the period of June 1, 2000 through August 17, 2000 shall be applied to rent due for subsequent months. The sum of rent already paid for the period June 1, 2000 through August 17, 2000 is \$11,859.24. This \$5,929.62 credit shall be applied as follows:
September \$4,910.00
October \$1,019.62
3. Lessee shall pay to Lessor by October 1, 2000 the sum of \$3,890.38 for October.
4. Regular monthly rent payments will resume effective November 1, 2000 and continue each month thereafter through the end of the five-year lease term.
5. All other respects, the original lease agreement between the parties dated August 12, 1998, as previously amended, remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presence to be executed as of the day and year first above written.



By DANNY L. KOLHAGE, Clerk

By Isabel C. DeSantis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Shirley Freeman
Mayor/Chairman

FILED FOR RECORD
00 OCT -6 AM 9:48
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FLA.

[Signature]
[Signature]
Witnesses

CONCH CRUISERS, INC.

[Signature]
Sal Parrinello

jdleaseconch00

APPROVED AS TO FORM BY
LEGAL SUFFICIENCY

[Signature]
SUZANNE A. HUTTON
9/25/00

FILED FOR RECORD AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession and Restaurant)

99 NOV 15 AM 11:01
DAVID C. ADRIANO
CLK. CR. C.
MONROE COUNTY, FLA.
This Amendment to Lease Agreement is made and entered into this 21st day of July, 1999, by and between THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA (Lessor) and CONCH CRUISERS, INC. (Lessee) in order to amend that certain Lease Agreement entered into between the parties dated August 12, 1998.

WHEREAS, the Lessee leases the Higgs Beach Restaurant and Concession from Lessor; and

WHEREAS, the Lessee has experienced a catastrophic and devastating loss of business due to the pollution and contamination of the waters around Higgs Beach; and

WHEREAS, the publicity surrounding the aforementioned has drastically reduced the amount of visitors to Higgs Beach, and

WHEREAS, paragraph 22 of the Lease between the parties allows the Lessor to grant an abatement of rent; and

WHEREAS, Lessee has paid rent in full through June of 1999, respectfully

NOW, THEREFORE, the lease agreement dated August 12, 1998, is hereby amended as follows,

1. In accordance with paragraph 22 of the Lease, the Lessor hereby grants an abatement of rent due to the closure of Higgs Beach caused by the pollution and contamination of adjacent waters as determined by The State of Florida, Department of Health.

2. Rent abatement will commence on June 11, 1999, and continue for a period of two weeks after the date the State of Florida, Department of Health declare the aforementioned waters once again safe for public use. Pre-paid rent will be applied to the next months rent due and owing under the terms of this amendment.

3. In all other respects, the original Lease Agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS OF, the parties have hereunto set their hands and seals, the date and year first written above.

(SEAL)
ATTEST: DANNIELA G. HIGGS, CLERK

By Isabel C. De Santis
Deputy/Clerk

Shirley D. Sutton
Isabel C. De Santis
Witnesses

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By William H. Harty
Mayor/Chairperson

CONCH CRUISERS, INC.

By Sal J. Parrinello
Sal J. Parrinello

leasecnkruz

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY SOZANNE A. HUTTON

DATE 10/26/99

AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession/Restaurant)

This amendment to Lease Agreement is made and entered into this 10th day of February, 1999, by and between the BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA (Lessor) and CONCH CRUISERS, INC., Sal Parrinello, (Lessee) in order to amend that certain Lease Agreement entered into between the parties dated August 12, 1998.

WHEREAS, the Lessee leases the Higgs Beach Restaurant and Concession from Lessor, and Lessor allowed the Lessee to occupy the restaurant beginning August 13, 1998, for the purpose of coordinating demolition and renovation of said facility; and

WHEREAS, the Lessee planned to complete renovations and open the restaurant for business beginning November 28, 1998; however, due to Hurricane Georges, the Lessee was not able to commence full operation of said business until January 21, 1999; and

WHEREAS, paragraph 22 of the lease between the parties allows the Lessor to grant an abatement of rent until such time as the damaged facility is restored;

WHEREAS, Lessee paid October's rent of \$4,583.33 and November's rent of \$4,583.33, which should be applied to rent due for January 21, 1999, February 20, 1999, and February 21, 1999, to March 20, 1999, respectfully;

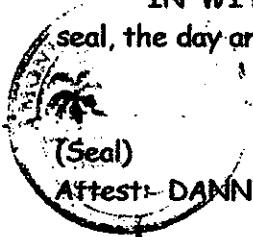
NOW, THEREFORE, the lease agreement dated August 12, 1998, is hereby amended as follows:

1. In accordance with paragraph 22 of the lease, the Lessor hereby grants an abatement of rent for Lessee's loss of business caused by damage to the facility from Hurricane Georges.
2. Because the restaurant did not open until January 21, 1999, rent payments made by the Lessee for October, 1998, and November, 1998, shall be credited to the first two month's of operation as follows: January 21, 1999 - February 20, 1999, and February 21, 1999 - March 20, 1999.
3. Pro-rated rent to be paid by Lessee for March 21, 1999 - March 31, 1999, is due on March 21, 1999, in the amount of \$1,808.16.

FILED FOR RECORD
99 MAR - 4 PM 4:08
DANNY J. KOLHAE
CLERK
MONROE COUNTY, FLA.

4. Regular monthly rent payments of \$4,583.33 will commence April 1, 1999, and continue each month thereafter through the end of the first year's term ending September 30, 1999.
5. In all other respects, the original lease agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal, the day and year first written above.



(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By Rita G. Jantzen
Deputy Clerk

By Wilhelmina Harvey
Mayor/Chairman

[Signature]
Witness

Laura Brunner
Witness

CONCH CRUISER'S, INC.

By [Signature]
Sal Parrinello

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY [Signature]
SUZANNE A. HUTTON

DATE 1/28/99

**SECTION THREE
NEGOTIATED LEASE AGREEMENT**

THIS lease, entered into on the 12th day of August, 1998, by and between the BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA (Lessor) and Conch Cruisers, Inc., Sal Parrinello (Lessee), whose address is 1601 Bahama Drive, Key West, Florida, 33040.

The parties to this lease hereby agree to the following:

1. This lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit "A".

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of all existing facilities, restaurant, bath house, and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant, such as furnish food and beach concession and provide janitorial services to the public rest rooms inclusive of opening and closing and supplying paper products at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. The Lessor hereby grants to the Lessee the exclusive right and privilege of operating and maintaining a full service concession/restaurant at Clarence S. Higgs Memorial Beach, Key West, Monroe County, Florida, for a term of five (5) years, said concession/restaurant to be located at the concrete building now situated upon said beach, and in as is condition. Square footage allocations shall be limited to the interior and enclosed patio area as referenced in Exhibit "A".
3. The Lessee may exercise an option to renew this lease for an additional five (5) years with written consent of the Board of County Commissioners, by giving Lessor written notice of their intention to exercise said option within sixty (60) days previous to the expiration of the original five (5) year term.
4. The Lessee, in consideration of the foregoing rights and privileges, does hereby covenant with the Lessor to pay rental fees as follows:

Year one (1): Monthly rent \$4,583.33 (\$55,000.00 per year)

Years two (2) thru five (5): Monthly rent \$4,910.00 (\$58,920.00 per year)

The contract/agreement (lease) amount agreed to herein may be adjusted annually in accordance with change in the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the annual average CPI computation from January 1 through December 31 of the previous year.

- A. Upon execution of this lease and prior to the Lessor's delivery of the premises to Lessee, Lessee shall deliver to the Lessor the sum of \$5083.33, for the first month's rent and damage deposit of \$500.00 and an irrevocable letter of credit from a local bank in the amount of \$4,910 for the last month's rent. Lessor shall not be required to post bond securing said advance rent or deposit.

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98 AUG 31 AM 11:35
DANNY L. KOHAGE
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MONROE COUNTY, FLA.

- B. The first month's rent, paid in advance, shall be for the month of October, 1998. Rent shall be due on the first day of each and every month thereafter, rent being payable in advance during the term of this lease. Lessee may assume occupancy as of August 13, 1998 for the purpose of coordinating demolition and renovation improvements, conditioned upon his full compliance with all terms of this lease, inclusive of insurance coverage effective as of said date. In addition to the foregoing rental payments, the Lessee covenants and agrees with the Lessor to pay State taxes, if any, and all utility charges, including but not limited to electric, water, sewer, and solid waste at said concession/restaurant, which shall be a result of the operation of the facilities granted under this lease. The Lessor reserves the right to terminate this lease for non-payment of rent by the Lessee for a period of fifteen (15) days or more.
5. In connection with the above demised properties, the Lessor covenants with the Lessee that conditioned on Lessee's performance and observance of Lessee's covenants herein, Lessee shall have quiet enjoyment and peaceable possession of the premises during the term of this lease. In the event the county elects to maintain and/or improve its properties in the vicinity of the leasehold herein, either by necessity, or by choice, such activity will not be considered as a breach of any covenant of this lease.
6. Lessee further covenants and agrees as follows:
- A. To keep open such concession/restaurant Monday-Sunday, including holidays, from 7:00AM-10:00PM, and shall not exceed the established beach hours in as specified in Monroe County Ordinance 13.5-3 (2)(E). Public rest rooms shall be opened at 7:00AM and closed at sunset, Monday-Sunday, including holidays, in accordance with Monroe County Ordinance 13.5-3(2)(C).
 - B. To furnish the necessary equipment, furnishing and fixtures needed to operate the concession/restaurant. All moveable equipment and furnishings shall remain the property of the Lessee and may be removed from the premises by Lessee at the termination of this lease agreement, with Lessor's consent. If Lessee fails to remove said moveable equipment or furnishings within ten (10) days after termination of this lease, said items shall then become the property of the Lessor.
 - C. Lessee shall provide full janitorial services for the public rest rooms inclusive of providing all janitorial supplies and paper products. Janitorial service frequency shall be on a daily basis to ensure rest rooms are maintained clean and sanitary. Rest rooms are to be inspected during the regular business day to ensure supplies are available and facility is clean and properly sanitized.
 - D. Lessee shall maintain a City and County Occupational License during the period of this lease.
 - E. Lessee agrees to keep the leased premises in a safe, clean, and well-maintained order at no expense to the Lessor. This provision is to be monitored by the Director of Public Facilities Maintenance or his representative.
 - F. Lessee agrees to operate his business in a business-like manner.

7. It is agreed by the parties hereto that Lessee may elect to sub-lease or assign the lease agreement only upon previous written consent of the Board of County Commissioners for Monroe County. The terms of this agreement shall be binding on the heirs, executors, administrators, sub-lessees and assigns of Lessee, which shall not be unreasonably withheld.
8. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the said demised term, be no mechanic's liens upon the concession/restaurant or improvements thereto; in case of any attempt to place a mechanic's lien on premises, the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest at the rate established by the Comptroller under Sec. 55.03, F.S., for the year in which the payment became overdue. Nothing in this paragraph is to be read as a waiver or authorization by the County of its constitutional and statutory immunity and right to have its property free of such liens.
9. Alcoholic beverages may be sold within the enclosed restaurant and patio only, upon acquisition and maintaining proper licenses from local, state, and federal agencies. No carry-out sales of alcoholic beverages is permitted. Sales and consumption of alcoholic beverages must cease by 10:30 P.M.
10. Entertainment may be provided only in the enclosed restaurant and patio area. Any entertainment must be acoustic soft background music and must cease by 10:30 P.M.
11. Lessee shall be responsible for and provide all licenses required by all local, state and federal agencies, including Department of Health.
12. It is expressly covenanted between the parties hereto that the Lessee will not use, suffer nor permit any person to use in any manner whatsoever the said demised property, nor any portion thereof, for purposes calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the ordinances of Monroe County, Florida and that the Lessee will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the Lessee.
13. It is further agreed that in no case shall the Lessor herein be liable, under any express or implied covenants in this lease agreement, for any damages whatsoever to the Lessee beyond the rent reserved by the Lease agreement accruing, for the act, or breach of covenant, for which damages may be sought to be recovered against said Lessor, and that in the event said Lessee shall be ousted from the possession of said property by reason of any defect in the title of said Lessor or said Lessor's authority to make this lease agreement, said Lessee shall not be required to pay rent under this lease agreement while

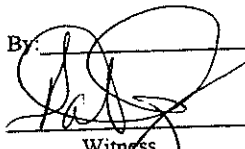

he is so deprived of the possession of said property, and that said Lessor shall not incur any liability of such ouster.

14. It is further mutually covenanted and agreed between the parties hereto that no waiver of a breach of any of the covenants of this lease agreement shall be construed to be a waiver of any succeeding breach of the same covenant.
15. The Lessee hereby covenants and agrees that he, his agents, employees or otherwise shall observe and obey all lawful rules and regulations which may from time to time during the term hereby promulgated and enforced by the Lessor at said beach.
16. The Lessor reserves the right hereunder to enter upon the premises at any reasonable time during normal beach hours for the purpose of inspecting said premises, and the Lessee hereby agrees to keep the premises at all times in a clean and sanitary condition, and not to maintain or keep upon said premises any properties or equipment not used in connection with the operation of said business, unless authorized by the Lessor to do so.
17. The Lessee agrees not to make any major alterations to the building located on said premises, without first obtaining written consent of the Lessor to do so, which will not be unreasonably withheld. Such alterations shall be based on plans approved by the Director of Facilities Maintenance and shall be subject to all City and County Code provisions governing construction. Lessee shall be responsible for obtaining any permits required by any governmental agency.
18. The Lessee shall be responsible for maintaining the structure. The Lessee will keep the premises clean at all times and must meet all requirements for food handling as required by the Monroe County Department of Health. All site improvements shall be pre-approved by the Monroe County Board of County Commissioners.
19. The Lessee shall be responsible for applying and obtaining all permits necessary by all local, state, and federal agencies.
20. Lessee covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of the Lessee utilizing the property governed by this lease/rental agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.
21. All property of any kind that may be on the premises during the continuance of this Lease shall be at the sole risk of the Lessee, the Lessor shall not be liable to the Lessee or any other person for any injury, loss, or damage to property to any person on the premises.

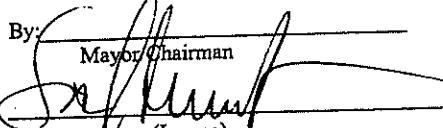
22. In the event that the demised premises, or the major part thereof are destroyed by fire, storm, or any other casualty, the Lessor at its option may forthwith repair the damage to such structure at its own cost and expense. The rental thereon shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rentals paid in advance by the Lessee prior to such destruction. Should the premises be only partly destroyed, so that the major part thereof is usable by the Lessee, then the rental shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as speedily as is practicable and upon the completion of such repairs, the full rental shall commence and the Lease shall then continue the balance of the term.
23. All written notices pursuant to this lease shall be forwarded to the following addresses:
- | | |
|-----------------------------------|-------------------------|
| Lessor: | Lessee: |
| Monroe County Public Works | Conch Cruisers, Inc. |
| Facilities Maintenance Department | Sal Parrinello |
| 3583 South Roosevelt Boulevard | 1601 Bahama Drive. |
| Key West, Florida 33040 | Key West, Florida 33040 |
24. If any dispute concerning this lease should arise between the Lessor and Lessee and which results in litigation, the prevailing party shall be entitled to payment of its reasonable attorney's fees and costs associated with said litigation from the losing party.
25. The Lessee will be responsible for all necessary insurance coverage as indicated on the attached forms identified as GIR, GL, WC1, VL, GLLIQ, ARP, and all other requirements found to be in the best interest of Monroe County, as may be imposed by the Monroe County Risk Management Department. All insurance required coverages shall actively be maintained during the lease term.
26. This lease shall be governed by the laws of the State of Florida. Venue for any disputes arising under this agreement shall be in a court of competent jurisdiction in Monroe County, Florida.

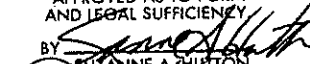
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

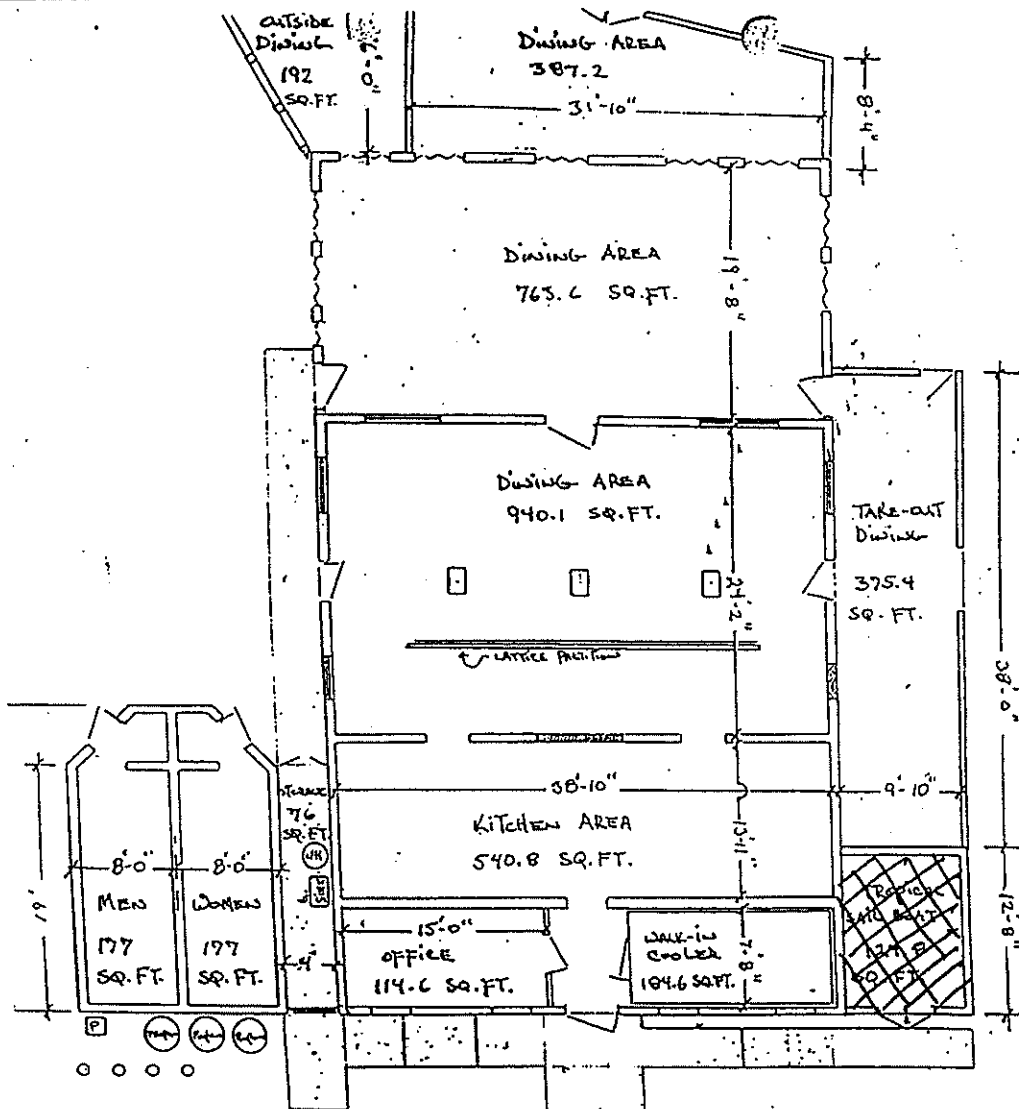
(SEAL)
Attest: DANNY L. KOLHAGE, CLERK

By: 
Witness

Witness

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: 
Mayor/Chairman
(Lessee)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: 
SUZANNE A. HUTTON
DATE: 8/19/98



TOTAL USABLE SQUARE FEET

3,928.3 ±

(SIDE WALKS NOT INCLUDED)

4-17-98

SKETCH BY J. KING

HIGGS BEACH
CONCESSION FACILITY

DRG. SIZE 11" x 17"
SCALE 1/8" = 1'-0"

(NOTE) NOT TO SCALE OTHERS REDUCED

(REVISED 6/11/98)